GLICK, Commissioner, dissenting:

1. I dissent from today’s orders because the Commission is falling short on its promise to pass onto consumers the benefits of the corporate tax reductions in the Tax Cuts and Jobs Act (TCJA).\(^1\) The records before us suggest that Wyoming Interstate Company, L.L.C. (Wyoming Interstate) and Natural Gas Pipeline Company of America LLC (Natural) (collectively, Pipelines) are now earning returns on equity (ROE) on the order of 20 percent—a number far outside the zone of reasonableness established in the most recent fully litigated rate case under the Natural Gas Act (NGA). Viewed in light of the full records before us, that should have been enough for the Commission to institute a proceeding under section 5\(^2\) of the NGA to examine whether the Pipelines’ rates are just and reasonable.

2. Enacted in 2017, the TCJA lowered the corporate income tax rate from 35 percent to 21 percent. Shortly thereafter, the Commission issued Order No. 849 to address the concern that natural gas pipelines could be over-charging customers based on the old 35 percent rate. Order No. 849 required natural gas pipelines to file a one-time informational report—\(i.e.,\) the 501-G Form—to “provid[e] the Commission and stakeholders information necessary to take targeted actions under NGA section 5 where necessary to achieve just and reasonable rates.”\(^3\) Order No. 849 also gave pipelines the option to make a limited NGA section 4\(^4\) filing to voluntarily reduce their rates to reflect the lower federal income tax rate.\(^5\) The Commission explained that if a pipeline elected


\(^3\) *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, 164 FERC ¶ 61,031, at P 31 (2018) (Order No. 849).


\(^5\) Order No. 849, 164 FERC ¶ 61,031 at P 33. The Commission also gave (continued ...)
not to make that limited filing, it would consider initiating a section 5 proceeding to ensure that the benefits of the TCJA were passed on to consumers.

3. Wyoming Interstate and Natural chose not to make filings to reflect the reduced corporate tax rate and so the question for the Commission is whether to seek to reduce their rates under NGA section 5. The Pipelines’ 501-G Forms suggest that they are now earning ROEs of 19.2 percent (Wyoming Interstate) and 23.5 percent (Natural). As noted, those ROEs are substantially above the just and reasonable ROE established in the most recent fully litigated natural gas pipeline rate case. Indeed, Wyoming Interstate’s ROE is more than twice the upper bound of the zone of reasonableness established in that case. That suggests that the Pipelines’ rates may well be unjust and unreasonable and it should have been a more-than-sufficient basis to institute section 5 proceedings.

4. Instead, the Commission declines to even begin a section 5 proceeding on the basis that the Pipelines’ current rates were established through settlements. That is a mistake. Both of the relevant settlements expressly provided that the just and reasonable standard would apply to any subsequent Commission action. As a result of the TCJA, pipelines a similar opportunity to address the reduction in the corporate tax rate by committing to make a section 4 filing “in the near future.”

---


7 In *El Paso Natural Gas Company*, the Commission calculated a zone of reasonableness of 10.39 to 11.08 percent and it set the just and reasonable ROE at 10.55. *El Paso Natural Gas Co.*, Opinion No. 528, 145 FERC ¶ 61,040, at P 642 (2013), *reh’g denied*, Opinion No. 528-A, 154 FERC ¶ 61,120 (2016). I recognize that has been several years since the record in *El Paso* was developed. But the ROE set in that proceeding nevertheless provides a relevant point of comparison for examining the Pipelines’ ROEs.

---

8 *See Emera Maine v. FERC*, 854 F.3d 9, 24 (D.C. Cir. 2017) (observing that “showing that the existing rate is entirely outside the zone of reasonableness” established by a discounted cash flow analysis is one way that the Commission can demonstrate that an existing ROE is unjust and unreasonable).

---

9 Natural Order, 169 FERC ¶ 61,053 at PP 14-15; Wyoming Interstate Order, 169 FERC ¶ 61,052 at PP 11-12.

---

10 *See Natural Order, 169 FERC ¶ 61,053 at P 16 (2019) (“Natural’s 2018 Settlement permits the Commission to modify the settlement upon a finding that the (continued …)
there has been a material change in circumstance and the Commission must examine whether those rates remain just and reasonable. As the Commission has previously explained, it has “not only the authority, but also the responsibility under section 5 of the NGA to make an adjustment to a settlement if the terms of the settlement have become unjust and unreasonable.”

Living up to that responsibility is particularly appropriate here because the corporate income tax rate, which is set by federal law, would presumably not have been something that the parties vigorously negotiated in the settlement proceedings.

5. The Commission contends that we should not exercise our section 5 authority because the Pipelines’ settlements, which were entered prior to the TCJA, contain moratoria with an exemption only for “industry-wide requirements” imposed by the Commission. It argues, that by filing their 501-G forms, the Pipelines complied with the Commission’s only “industry-wide” requirements and so it is time to close the book on these proceedings. I disagree. The moratoria in both settlements expressly do not apply to the Commission and, therefore, do not provide a reasoned basis for the Commission’s decision in today’s order. In any case, the Commission’s interpretation would transform Order No. 849, as applied to the Pipelines, into meaningless paperwork and process. That is not what the Commission had in mind when it made Order No. 849

settlement is unjust and unreasonable.”); Wyoming Interstate Order, 169 FERC ¶ 61,052 at n.28 (2019) (Wyoming Interstate’s “[s]ettlement permits the Commission to modify the settlement upon a finding that the settlement is unjust and unreasonable.”).


12 Order No. 849 expressly distinguished between settlements agreed to prior to the notice of proposed rulemaking (NOPR) and those agreed to after the NOPR was published. The Commission explained that, “only in th[e] circumstance” where a settlement was agreed to after the NOPR, would it “presume that all the settling parties were aware of, and took into account, . . . the NOPR . . . when they agreed to the settlement,” meaning that “no further change in the pipeline’s rates is needed.” Order No. 849, 164 FERC ¶ 61,031 at P 160.

13 Natural Order, 169 FERC ¶ 61,053 at P 15; Wyoming Interstate Order, 169 FERC ¶ 61,052 at P 12 & n.28.

14 See Settlement, Docket No. RP17-302-000, §§ 4.2, 5.5 (Wyoming Interstate’s settlement, which defines “Supporting or Non-Opposing Party,” which are the only parties bound by the section 5 moratorium in the settlement); Settlement, Docket No. RP17-303-000, at §§ 7.2, 11.1 (Natural’s settlement, which defines “Settling Parties,” which are the only parties bound by the section 5 moratorium in the settlement).

(continued ...)

(continued ...
the crux of its efforts to ensure that the TJCA actually benefits customers and is not just a windfall for pipelines.

6. To be clear, I fully appreciate the importance of settlements as an efficient means of addressing rate disputes that come before the Commission. I also recognize that “preserving the bargains of the parties to the greatest extent possible encourages settlements.” But where the records indicate that rates established through a settlement are no longer just and reasonable, the Commission’s understandable solicitude for settlements cannot justify leaving in place rates that may violate the NGA. Unfortunately, that is precisely the result of today’s order.

    For these reasons, I respectfully dissent.

Richard Glick
Commissioner

15 Wyoming Interstate Order, 169 FERC ¶ 61,052 at n.28 (internal quotation marks omitted); Natural Order, 169 FERC ¶ 61,053 at n.30 (same).